

Remarks:

Regarding the rejection of claims made under 35 USC 112:

The currently presented claims have been amended to address and overcome the grounds of rejection based on 35 USC 112.

Regarding the rejection of claims 1-6, 8-12 under 35 USC 102(b) in view of US 6268325 to Luciani et al. (hereafter "Luciani"):

With regard to the Examiner's grounds of rejection under 35 USC §102(b), that statute holds in relevant part that a person shall be entitled to a patent unless "the invention was ... in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States." Unpatentability based on "anticipation" requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a single reference describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)

The applicant points out that the claims have been amended to necessarily include a colloid-forming clay in the compositions in amounts of "less than 1%wt." which is intended to exclude the range of "1% to 10% w/w of a colloid-forming material" recited by Luciani. Support for this amendment to the claim found in one or more of the Examples of applicant's "Table 1" as filed. The amendment is believed to address and overcome the rejection under 35 USC 102(b).

Regarding the rejection of claims 1-5, 8-12 under 35 USC 102(b) in view of US 5554321 to Choy (hereinafter "Choy"):

The applicant points out that the claims have been amended to necessarily include a colloid-forming clay in the compositions in amounts of "less than 1%wt." which is intended to exclude the range of "1% to 10% w/w of a colloid-forming material" recited by Luciani, but to require such a colloid-forming clay as a necessary part of the thickener component. The thickener component may be based solely on the colloid forming material, but in preferred embodiments includes colloid forming clay(s) and a further thickener constituent. The amended claim is believed to address and overcome the Choy reference, which at col. 5, lines 34 – 36 teaches that "Common clays, for instance, will likely lead to a false body rheology, which, at rest, turn very viscous." From the foregoing it is clear that Choy's compositions expressly *exclude* clays which are common examples of colloid-forming materials. As such it is clear that Choy fails to teach thickened compositions which include clays as thickeners and thus cannot be fairly said to anticipate the currently amended claim 1. The amendments to the claims entered herein are thus believed to address and overcome the rejection under 35 USC 102(b) in view of Choy.

Regarding the rejection of claims 1 -5, 8-12 under 35 USC 102(b) in view of EP 649898 (hereinafter "EP898"):

The applicant again points out that the claims have been amended to necessarily include a colloid-forming clay in the compositions in amounts of "less than 1%wt." for reasons discussed above, but to require such a colloid-forming clay as a necessary part of the thickener component. As stated previously, the thickener component may be based solely on the colloid forming material, but in preferred embodiments includes colloid forming clay(s) and a further thickener constituent. The amended claim is believed to address and overcome the EP898 reference, which at page 5, lines 19 – 20 expressly

recites that "Common clays, for instance, will likely lead to a false body rheology, which, at rest, turn very viscous." From the foregoing it is clear that the EP898 compositions expressly *exclude* clays which are common examples of colloid-forming materials. As such it is clear that EP898 fails to teach thickened compositions which include clays as thickeners and thus cannot be fairly said to anticipate the currently amended claim 1. The amendments to the claims entered herein are thus believed to address and overcome the rejection under 35 USC 102(b) in view of the EP898 reference.

Regarding the rejection of claims 1, 4, 6 and 8-12 under 35 USC 102(b) in view of WO 96/35771 (hereinafter WO771):

A review of the WO771 reference reveals that a key constituent in the thickening system provided in those prior art compositions are "from about 0.5 to about 3% of a thickening system comprising a cross-linked polyacrylate resin having a molecular weight in the range of 1,000,000 to 10,000,000 and a synthetic smectite clay resembling natural clays of the hectorite class, the amount of said clay being from about 20 to about 80%, preferably from 50 to 80% of the thickening system..". Notably at page 3, lines 13 – 16, the WO771 reference notes that "Natural clays of the smectite or attapulgite type have been used as thickeners in cleaning compositions. [...] None of these disclosed compositions possess the desired characteristics [of the WO771 compositions]. Thus is it clear from the foregoing that the compositions of WO771 are solely directed to a "synthetic smectite clay of the hectorite class" (see WO771, page 4, lines 1-2) which are later described to be "... a synthetic smectite-type clay similar to hectorite in structure and composition. A synthetic, rather than a natural clay is preferably used in order to avoid degradation of the composition owing to small amounts of impurities which may be found in natural products. The preferred synthetic smectite clays for use in this invention are sold under the trademark Laponite by Southern Clay Products Inc. Particularly useful are Laponite SD and Laponite RDS with Laponite SD being especially preferred because it contains no phosphates" (see WO771, page 7, lines 19 – 24).

From the foregoing teachings from WO771 it is clear that the *only synthetic* smectite clays are shown to be effective, and that any other form of clay particularly one which may have been obtained from a naturally occurring source are deemed to be unsuitable for the WO771 compositions. The attention of the Office is directed to "Example 1" through "Example 12" which are limited to using only synthetic clays, specifically only use Laponite RD or Laponite RDS in the compositions. This statement coupled with the teaching at WO771, page 4, lines 1-2 indicating the unsuitability of clays from naturally occurring sources is fairly said to strictly limit what is actually disclosed in WO771.

In contrast, the currently amended claim is not so limited and the "at least one colloid-forming clay" of the claim is expressly intended to include clays from naturally occurring sources which the present applicants copiously demonstrate in their examples. Accordingly, the amendments to the claims entered herein are thus believed to address and overcome the rejection under 35 USC 102(b) in view of the WO771 reference.

Regarding the rejection of claims 1, 4, 6 and 8-12 under 35 USC 102(b) in view of GB 2311996 (hereinafter GB996):

With respect to the GB996 reference, the compositions disclosed in this reference are closely akin to the compositions of the WO771 reference discussed immediately above. In GB996 however the compositions are defined as being directed to comprising "(a) from about 0.5% to 10% abrasive particles, (b) from 0.5 to 2.5%wt. of a chlorine containing bleach, (c) from 0.2 to 3% based on the weight of the composition, of a cross linked polyacrylate resin having a molecular weight in the range of 1,000,000 to 10,000,000 and from 0 to 2.5% of a synthetic smectite clay, (d) from 0.25 to 3.0% of a bleach stable surfactant system comprising mainly anionic surfactants, (e) from 0 to 3% of an electrolyte selected from the group comprising sodium or potassium carbonates or

silicates, and (f) sufficient amount of sodium or potassium hydroxide to provide a pH in the range of 11.5 to 13.5" (GB996, page 3, lines 19 – 28).

With respect to the role of the clay in the compositions, GB996 expressly notes that "Natural clays of the smectite or attapulgite type have been used as thickeners including compositions. [...] It does not appear, from the disclosed art that use of these natural clays alone would provide suitable thickening and a high level of chlorine stability." (GB996, page 2, lines 14 – 20). Thus it is clear from the foregoing that the compositions according to GB996 are solely directed to a "... a synthetic smectite-type clay similar to hectorite in structure and composition. A synthetic, rather than a natural clay is preferably used in order to avoid degradation of the composition owing to small amounts of impurities which may be found in natural products. The preferred synthetic smectite clays for use in this invention are sold under the trademark Laponite by Southern Clay Products Inc. Particularly useful are Laponite SD and Laponite RDS with Laponite SD being especially preferred because it contains no phosphates" (see GB996, page 7, line 26 through page 8, lines 1 - 4). From the examples at pages 11 – 14 of GB996 only a single synthetic clay, Laponite RD, is demonstrated to be useful. This statement coupled with the teaching of GB996, page 2, lines 14 – 20 indicating the unsuitability of clays from naturally occurring sources is fairly said to strictly limit what is actually disclosed in GB996.

In contrast, the currently amended claim is not so limited and the "at least one colloid-forming clay" of the claim is expressly intended to include clays from naturally occurring sources which the present applicants copiously demonstrate in their examples. Accordingly, the amendments to the claims entered herein are thus believed to address and overcome the rejection under 35 USC 102(b) in view of the GB996 reference.

Regarding the rejection of claim 7 under 35 USC 103(a) in view of US 6268325 to Luciani, US 5554321 to Choy, EP649898, WO 96/35771 or GB 2311996 further in view of US 6114298 to Petri (hereinafter "Petri"):

Prior to discussing the relative merits of the Examiner's position, the applicants respectfully remind the Examiner, that pursuant to the M.P.E.P. Sec. 2143, in order to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third and finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). It is the applicant's view that these basic criteria has not been met.

The Applicant respectfully traverses the rejection of the claims as being obvious in view of any of the foregoing prior art documents already discussed further in view of Petrie.

Turning to Petrie, an examination of that document quickly reveals that there is no mention, nor even suggestion of the utility of colloid-forming clay thickeners as an essential element of a thickening system useful in an aqueous bleach-containing composition. While the Examiner has pointed out that Petrie discusses useful "shear-thinning polymeric thickeners or mixtures" which include polyacrylamide polymers, polycarboxylate polymers such as polyacrylate polymers, nonetheless, Petrie is wholly solid as to the necessity of a colloid-forming clay. Thus, in view of the currently presented claim 1 it is not believed that the Petrie reference overcomes any of the shortcomings of the prior art documents discussed individually above.

Accordingly, reconsideration of the rejection in view of Petrie considered in combination with the foregoing prior art documents as against claim 7 is respectfully requested, and withdrawal of the rejection against claim 7 being proper is solicited.

Regarding the rejection of claims 2, 3 and 5 under 35 USC 103(a) in view of WO 96/35771 or GB 2311996 further in view of US 6268325 to Luciani:

The Applicant respectfully traverses the grounds of rejection of the claims in view of WO 771 or GB 996 further in view of Luciani.

As has been discussed above, Luciani fails to teach or suggest the types of thickening systems which are now the subject matter of claim 1 of the present application. The addition of WO 771 or GB 996 is nonetheless not believed to overcome the inherent shortcoming of the Luciani reference. As discussed above, the WO 771 and the GB 996 references are believed to be directed to a narrowly circumscribed scope of subject matter which necessarily requires that a synthetic clay be necessarily included. In contrast, the compositions according to Luciani are not similarly circumscribed and thus it is believed that any proper combination of these two references would at best require that there be used a synthetic type clay at the weight percentages recited by Luciani. In any case the such a combination is still distinguishable over the currently amended claim 1 as presented herein. Again, claim 1 is not dependent upon the necessary presence of a synthetic smectite clay as is required of WO 771 or GB 996, nor according to present claim 1 are the colloid-forming clay present in amounts as disclosed by Luciani. WO771 and GB 996's teaching of the failure of naturally occurring clays function to "teach away" from anything but the use of synthetic smectite clays. Indeed, it is believed that the combination of these prior art documents is *prima facie* inappropriate in that WO 771 and GB 996 are narrowly directed towards synthetic smectite clays, which "teaches away" from the use of any types of clays such as the types of clays demonstrated by the present applicants in a plurality of their examples.

Accordingly, reconsideration of the propriety of the rejection and its withdrawal from further consideration is requested.

Regarding the rejection of claim 6 under 35 USC 103(a) over US 5554321 to Choy, or EP 649898 further in view of WO 96/35771:

The Applicants traverse the rejection of claim 6 in view of Choy, or EP 898 further in view of WO 771.

As has been noted above, WO 771 is narrowly circumscribed to the utility of certain specific synthetic smectite clays in thickening systems for aqueous bleach-containing compositions. At the outset, this is deemed to be a significant narrowing of the applicability of this reference, and its suitability for consideration in combination with any other prior art documents. For example, any combination with Choy would impart to Choy the requirement inherent in WO 771, namely that the thickening system of Choy necessarily include the synthetic smectite polymer provided by WO 771. However, such is totally contrary to the express teaching of Choy, particularly at column 5, lines 34-36 of that reference which expressly teaches the exclusion of the use of common clays. Thus, it is not seen how these two prior art documents can be properly combined to form a rejection under 35 USC § 103 and accordingly, withdrawal of the rejection proposed by the Examiner is solicited.

Similarly, the Examiner's proposed combination of EP 898 in conjunction with WO 771 is also believed to be equally flawed. Whereas WO 771 expressly teaches the desirability, albeit a limited utility of synthetic smectite type clays in certain bleach-containing thickened compositions, EP 898 expressly teaches away from the utility of colloid-forming materials, as is recited at page 5, lines 19-20 of that reference. Again, it is not believed that this combination of references is proper as clearly, EP 898 expressly excludes the types of constituents which WO 771 recites as being an essential constituent.

Accordingly, reconsideration of the propriety of this rejection, and its withdrawal from further consideration is solicited.

In view of the foregoing amendments to the claims and the foregoing remarks, reconsideration of the rejections raised by the Examiner against the currently presented claims is respectfully requested. Should the Examiner in charge of this application believe that telephonic communication with the undersigned representative would meaningfully advance the prosecution of this application towards allowance, the Examiner is invited to contact the undersigned at their convenience.

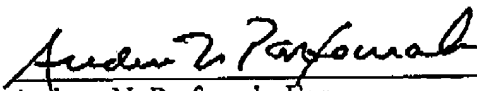
PETITION FOR A ONE-MONTH EXTENSION OF TIME

The applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;



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24 May 2006
Date:

CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571-272-8300 on the date shown below:


Kimberly Brittingham

5/24/06
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